

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JAMES GINZKEY, RICHARD  
FITZGERALD, CHARLES CERF, BARRY  
DONNER, and on behalf of the class  
members described below,

*Plaintiffs,*

v.

NATIONAL SECURITIES  
CORPORATION, a Washington Corporation

*Defendant.*

Case No.: 2:18-cv-1773-RSM

**PLAINTIFFS' PROPOSED NOTICE  
PLAN**

**I. INTRODUCTION**

Plaintiffs bring this class action lawsuit against Defendant National Securities Corporation, ("Defendant" or "NSC") regarding private placement securities offerings made by Beamreach Solar, Inc. ("Beamreach"). On April 27, 2021, this Court certified the following Class and Sub-Classes under Rule 23(b)(3).

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**Beamreach Class**

All persons who invested in Beamreach Offerings (as defined above) through the Defendant, at any time between February 6, 2015 and February 9, 2017 inclusive (the “Class Period”).

**Series D Sub-Class**

All persons who invested in Beamreach Series D (as defined above) through the Defendant, at any time between February 6, 2015 and December 31, 2016 inclusive (the “Sub-Class D Period”).

**Series D-1 Sub-Class**

All persons who invested in Beamreach Series D-1 (as defined above) through the Defendant, at any time between June 1, 2016 and February 9, 2017 inclusive (the “Sub-Class D-1 Period”).

**Series D-2 Sub-Class**

All persons who invested in Beamreach Series D-1 (as defined above) through the Defendant, at any time between October 1, 2016 and February 9, 2017 inclusive (the “Sub-Class D-2 Period”).

Excluded from the Class or Subclasses are Defendant and any of its officers, directors, employees, agents, parents, affiliates or subsidiaries. Also excluded is any entity related to or affiliated with Beamreach, and any judicial officers presiding over this matter and their immediate family members.

Pursuant to the Court’s Order (Dkt. No. 66), Plaintiffs respectfully submit this plan for sending notice to the certified Class and Sub-Classes.

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## II. PROPOSED FORMS AND MANNER OF NOTICE

In order to notify Class members that this case has been certified as a class action, Plaintiff proposes mailing a Letter substantially similar to the one attached as Appendix A (Letter Notice) via First Class Mail to all Class and Sub-Class members, whose addresses Defendant provides. The Letter Notice includes basic information about the class action and the right to be excluded, and direct Class members to a website where they can find detailed information about the action, including (1) a Long-form Notice in substantially the form as that attached as Appendix B; (2) Plaintiffs' Class Action Complaint (Dkt. No. 1); (3) Defendant's Answer (Dkt. No. 31); and (4) this Court's Order on Plaintiffs' Motion for Class Certification (Dkt. No. 66).

Class Counsel will also use the website to keep Class members apprised of important dates and deadlines in the litigation, and to provide answers to frequently asked questions. Both the Letter Notice and the website will provide Class Counsel's contact information, including a toll-free number the Class members may call if they would like further information.

The proposed forms of notice, written in plain English and easily understood, provide neutral and objective information about the nature of the litigation and the Class claims. *See generally* App. A. The forms include information about who is in the Class, a statement of each Class member's rights (including the right to opt out of the Classes), a statement of the consequences of remaining in the Class, and methods for contacting Class Counsel and obtaining more information and documents regarding the litigation. Plaintiffs provided draft the draft notice forms to counsel for Defendant for the opportunity to propose modifications. Defendant's proposed modifications have been incorporated into App. A.

To opt out of the lawsuit, a Class member only has to sign and mail a letter to Class Counsel (postmarked by the opt-out deadline) indicating that he or she desires to be excluded from the litigation. Plaintiff proposes setting the opt-out deadline forty-five (45) days from the date notice is initially mailed to the Classes. This period will give Class members ample time to receive notice, make an informed decision regarding their participation in the case, and, if they choose, exercise their right to opt out.

### **III. THE PROPOSED FORMS AND MANNER OF NOTICE**

To protect the rights of absent class members, the Court must provide them with the best notice practicable when it certifies a class under Fed. R. Civ. P. 23(b)(3). The best notice practicable is that which is “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

#### **A. Plaintiffs’ Plan for Disseminating Notice Satisfies Due Process**

Where the names and addresses of potential class members are readily ascertainable, notice by mail is generally the preferred method. Manual for Complex Litig. (Fourth) § 21.311, at 391–92 (2015). “Posting notices on dedicated Internet sites, likely to be visited by class members and linked to more detailed certification information, is a useful supplement to individual notice, might be provided at a relatively low cost, and will become increasingly useful as the percentage of the population that regularly relies on the Internet for information increases.” *See id.* at 392.

Here, Plaintiff is working with American Legal Claim Services, LLC, a class action administration firm. Using the Class member information provided by Defendant, American Legal Claim Services, LLC will perform address updating through National Change of

1 Address processing. American Legal Claim Services, LLC will then mail notice directly to  
 2 each Class member. Plaintiffs will attempt to re-mail any Letter Notices that are returned as  
 3 undeliverable. If a Letter Notice is returned with a forwarding address, Plaintiffs will attempt  
 4 to re-mail the notice to the address provided. If a Letter Notice is returned without a  
 5 forwarding address, Plaintiffs will use a skip tracing database service to find possible alternate  
 6 addresses. Thus, due process is satisfied. *Mullane*, 339 U.S. at 318.

### 8 **B. Plaintiffs' Proposed Forms of Notice Satisfy Due Process**

9 The effectiveness of a notice effort depends in large part on the form given to the  
 10 notice. As a general rule, notice should come to the attention of a class member in terms that  
 11 are clear and simple and should be neutral, objective, and informative. 3 Alba Conte &  
 12 Herbert B. Newberg, *Newberg on Class Actions* § 8:12 (5th ed. 2015); *see also* Fed. R. Civ.  
 13 P. 23 advisory committee's note (2003) ("The direction that class-certification notice be  
 14 couched in plain, easily understood language is a reminder of the need to work unrelentingly  
 15 at the difficult task of communicating with class members."). The notice "must avoid  
 16 endorsing the merits of the claim." *See Adoma v. Univ. of Phoenix, Inc.*, No. CIV. S-10-0059  
 17 LKK/GGH, 2010 WL 4054109, at \*2 (E.D. Cal. Oct. 15, 2015) (citing *Hoffman La-Roche v.*  
 18 *Sperling*, 493 U.S. 165, 173 (1989)).

19 Plaintiffs' proposed notice forms meet these goals. The notices' tone is neutral. *See*  
 20 App. A. The forms are "intended to be noticed" and easy to understand, with large headlines.  
 21 *Id.* Without becoming overwhelming or mired in legalese, the notices include  
 22 enough information to all Class members to make informed decisions regarding their right to  
 23 participate in or opt out of the action. *See id.* Class members who would like additional details  
 24 are given convenient mechanisms by which to gather such information such as a toll-free  
 25

1 number, internet address, and traditional mailing address for Class Counsel and the website.

2 *Id.*

3  
4 Most importantly, though, Plaintiffs' proposed notice forms comport with the  
5 requirements of Fed. R. Civ. P. 23 and due process. When notice is issued it must advise each  
6 class member of (1) the nature of the action; (2) the definition(s) of the certified classes; (3) a  
7 description of the class claims; (4) that a class member may enter an appearance through  
8 counsel if the member so desires; (5) that the Court will excluded from the classes any  
9 member who requests exclusion, stating when and how members may elect to be excluded;  
10 and (6) the binding effect of a class judgment on class members who do not request exclusion.  
11 *See* Fed. R. Civ. P. 23(c)(2)(B); *see also Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812  
12 (1985) (stating due process requires notice to apprise party of pendency of action, afford party  
13 opportunity to appear describe party's rights, and provide party opportunity to opt out of  
14 action). The forms Plaintiffs have proposed satisfy each of these requirements. *See App.*

#### 16 IV. CONCLUSION

17 If implemented, Plaintiffs' proposed plan will achieve the ultimate objective of  
18 providing neutral, informative notification of this action to Class members so that they can  
19 make knowledgeable and reasoned decisions regarding their rights. Under the circumstances,  
20 this is the best notice practicable. For these reasons, Plaintiffs respectfully request that the  
21 proposed notice plan be approved.  
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1 Dated: August 30, 2021

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3 Respectfully submitted,  
4 **JAMES GINZKEY, RICHARD**  
5 **FITZGERALD, CHARLES CERF, BARRY**  
6 **DONNER,**  
7 Plaintiffs

8 By: /s/ David Neuman  
9 One of Their Attorneys

10 Joseph Wojciechowski, Esq.  
11 Alex Loftus, Esq.  
12 Sara Hanley, Esq.  
13 *Pro Hac Vice*  
14 STOLTMANN LAW OFFICES, P.C.  
15 161 N. Clark St., 16<sup>th</sup> Floor  
16 Chicago, Illinois 60601  
17 PH: (312) 332-4200  
18 joe@stoltlaw.com  
19 alex@stoltlaw.com  
20 sara@stoltlaw.com

21 Joshua B. Kons, Esq.  
22 LAW OFFICES OF JOSHUA B. KONS, LLC  
23 *Pro Hac Vice*  
24 92 Hopmeadow St., Lower Level  
25 Weatogue, Connecticut 06089  
26 PH: (860) 920-5181  
27 joshuakons@konslaw.com

28 David Neuman, Esq. (WSB #48176)  
ISRAELS NEUMAN PLC  
10900 NE 8th Street, Suite 1000  
Bellevue, Washington 98004  
dave@israelsneuman.com

*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I, hereby certify that on this August 30, 2021, the foregoing was electronically filed with the Clerk of the United States District Court for the Western District of Washington, Seattle, using the CM/ECF system, which will send notification of such filing to the below counsel:

Danilo (Daniel) Buzzetta  
BAKER & HOSTETLER LLP  
45 ROCKFELLER PLAZA  
NEW YORK, NY 10111  
dbuzzetta@bakerlaw.com

Curt Roy Hine  
BAKER HOSTETLER LLP (SEA)  
999 THIRD AVENUE, SUITE 3900  
SEATTLE, WA 98104  
dgreene@bakerlaw.com

Douglas W Greene  
BAKER HOSTETLER LLP (SEA)  
999 THIRD AVENUE, SUITE 3900  
SEATTLE, WA 98104  
dgreene@bakerlaw.com

James Raymond Morrison  
BAKER HOSTETLER LLP (SEA)  
999 THIRD AVENUE, SUITE 3900  
SEATTLE, WA 98104  
jmorrison@bakerlaw.com

/s/ David Neuman  
David Neuman